



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Approved For Release 2004/03/31 : CIA-RDP80M00165A002100050017-9

WASHINGTON, D.C. 20503

77-2107

GENERAL COUNSEL

August 18, 1977

Honorable Stansfield Turner
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Turner:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Invocation of Executive Privilege in Response to Congressional Requests."

This proposed order was submitted informally by the White House.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving your comments concerning this proposed Executive order. Comments or inquiries may be submitted by telephone to Mr. Ronald A. Kienlen or Mr. Steven D. Needle of this office (395-5600; IDS 103-5600). I will assume that you have no objection to the issuance of this proposed order if your comments have not been received by Thursday, September 6, 1977.

Tuesday

Sincerely,

William M. Nichols
William M. Nichols
General Counsel

Enclosure

EXECUTIVE ORDER

INVOCATION OF EXECUTIVE PRIVILEGE
IN RESPONSE TO CONGRESSIONAL REQUESTS

By virtue of the authority vested in me by the Constitution of the United States, and as President of the United States of America, it is hereby ordered as follows:

Section 1. The heads of all departments and agencies shall comply to the fullest extent possible with Congressional requests for information in order to assist the Congress in the enactment of effective legislation and the discharge of its oversight and investigative functions. Only the most compelling reasons founded on the public interest will justify withholding information from the Congress by the Executive branch.

Section 2. A request for information by a Congressional committee or other authorized Congressional body shall be considered by Executive departments and agencies as expeditiously as the circumstances surrounding that request permit. Such a request will be denied on the grounds of Executive privilege only after a rigorous inquiry is made into the actual need to do so and after specific Presidential approval. In order to insure that these conditions are fulfilled, the steps set forth below shall be taken in those instances where negotiations with the Congress cannot produce a mutually agreeable solution:

- 1) The head of the department or agency subject to a Congressional request for information shall consult with the Attorney General, through the Office of Legal Counsel of the Department of Justice, as to the basis for the invocation of Executive privilege.

2) If the head of the department or agency and the Attorney General agree, in accordance with the policy set forth herein, that Executive privilege shall not be invoked, the information shall be released promptly to the inquiring Congressional body.

3) If the head of the department or agency and the Attorney General agree that the circumstances justify the invocation of Executive privilege, or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President.

4) The Counsel to the President shall notify the head of the department or agency of the President's decision. Such notification shall be in writing and, if Executive privilege is to be invoked, shall set forth the reasons therefor.

5) In the event of a Presidential decision to invoke Executive privilege, the head of the department or agency shall advise the Congressional body that the claim of Executive privilege is being made with the specific approval of the President. The head of the department or agency shall supply the Congressional body with a copy of the notification received from the Counsel to the President setting forth the reasons for the President's decision to invoke Executive privilege.

Section 3. Pending a final determination concerning invocation of Executive privilege, the head of the department or agency should request the Congressional body to hold its request for the information in abeyance until such determination can be made. This request for such a delay does not itself constitute a claim of Executive privilege but rather serves to guard against a premature assertion of such privilege.

Section 4. The head of each department or agency shall take such steps as may be necessary to ensure adherence to the purposes and requirements of this order. The Attorney General, through the Office of Legal Counsel of the Department of Justice, shall render to the heads of departments and agencies such advice as may be needed to further the purposes of this order and to implement and maintain its requirements.

Section 5. The policy enunciated in this order shall apply to any request or legal demand by a Congressional body for information held by an Executive department or agency, except where such request or demand is for information whose disclosure is protected by a privilege other than Executive privilege or is subject to statutory or other lawful prohibition. This administration will continue to go to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. For these reasons the scope of Executive privilege must be very narrowly construed.

THE WHITE HOUSE

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GENERAL COUNSEL

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

August 19, 1977

Admiral Stansfield Turner
Director
Central Intelligence
Agency
Washington, D. C. 20505

Dear Admiral Turner:

By letter dated August 18 we requested the views of your agency on a proposed Executive order entitled "Invocation of Executive Privilege in Response to Congressional Requests." Your views were requested by Thursday, September 6, 1977. This should have read Tuesday, September 6, 1977.

We apologize for any confusion or inconvenience this may have caused.

Sincerely,

A handwritten signature in cursive ink that appears to read "Steven D. Needle".

Steven D. Needle
Assistant General Counsel

EXECUTIVE SECRETARIAT

Routing Slip

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| TO: | | ACTION | INFO | DATE | INITIAL |
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| 15 | DTR | | | | |
| 16 | Asst/DCI | | | | |
| 17 | AO/DCI | | | | |
| 18 | C/IPS | | | | |
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Remarks:

For direct response. No
correlation as appropriate
with Leg Counsel [redacted]

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(EXECUTIVE REGISTRY FILE)

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